Calendar No. 778

96TH CONGRESS
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No. 96-728

OIL IMPORT FEE DISAPPROVAL RESOLUTION

MAY 15 (legislative day, JANUARY 3), 1980.—Ordered to be printed

Mr. LONG, from the Committee on Finance, submitted the following

REPORT

[To accompany S.J. Res. 159]

The Committee on Finance, to which was referred the joint resolution (S.J. Res. 159) disapproving the actions taken by the President under section 232 of the Trade Expansion Act of 1962 in imposing the Petroleum Import Adjustment Program, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

I. SUMMARY

S.J. Res. 159 would disapprove the President's actions purportedly taken under authority of section 232 of the Trade Expansion Act of 1962 (TEA) in imposing the "Petroleum Import Adjustment Program" by Proclamation 4744 of April 2, 1980. Pursuant to section 232(e) of the TEA, enactment of S.J. Res. 159 would render such actions of the President of no force or effect prospectively from the date of enactment of the resolution.

II. GENERAL EXPLANATION

Present law.—Under section 232 of the TEA (19 U.S.C. 1862), if the Secretary of Commerce (prior to January 2, 1980, the Secretary of the Treasury) found after an appropriate investigation that imports of an article "threaten to impair the national security," the President is authorized to "take such action, and for such time, as he deems necessary to adjust the imports of such article" so as to prevent the threat to national security. This section has been held to authorize the President to impose a system of license fees, as well as quotas, as a means of controlling imports see *The Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U.S. 548 (1976)).

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The Emergency Petroleum Allocation Act of 1973 (EPAA) (15 U.S.C. 751 *et seq.*) grants the President temporary authority to impose price and allocation controls on crude oil and refined products. Controls on price issued pursuant to this authority are gradually being withdrawn between June 1, 1979 and October 1, 1981 under the President's phased decontrol program announced on April 5, 1979. The entire EPAA price and allocation authority will expire on September 30, 1981. There is no authority under the EPAA to impose a fee on oil imports.

Section 402 of the Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96–223) amended section 232 of the TEA to provide a procedure for overriding Presidential actions taken under that section affecting petroleum or petroleum products. Under the provisions of new section 232(e), an action taken by the President under section 232 to adjust the imports of petroleum or petroleum products would cease to have force or effect upon the enactment of a joint resolution specified in new section 232(e) disapproving such action. As an action of the rulemaking power of the House of Representatives and the Senate, any resolution of disapproval would not be subject to amendment in either the House or the Senate. Such resolutions may be adopted by simple majorities of both Houses and are subject to Presidential veto and Congressional override. There are no time limits provided in the statute within which action by the committee or Congress on these disapproval resolutions must occur. No provision of the Crude Oil Windfall Profit Tax Act of 1980 or any other law provides a similar procedure for Congressional disapproval of a domestic entitlement program set up by the President pursuant to the EPAA.

Petroleum Import Adjustment Program.—On April 2, 1980, the President signed Presidential Proclamation 4744, the Petroleum Import Adjustment Program. The President cited as authority for his action in setting up the program section 232 of the TEA and the EPAA.

Under the President's program made effective by Proclamation 4744, crude oil imported on or after March 15, 1980, would be subject to an import fee of $4.62 per barrel to be paid by the importer. Under the program, the cost of this fee would be shifted entirely to the total domestic production of gasoline regardless whether the gasoline is refined from imported or domestic crude oil. This would be accomplished through a mechanism similar to, but separate from, the current entitlements program under the EPAA. Under the new entitlement system created by Proclamation 4744, for each month beginning with March 1980, there would be created for the month a number of "entitlements" equal to the number of barrels of gasoline produced in the United States during that month. The value of each entitlement for that month would be equal to the total national import fees on crude oil paid by all importers for the month divided by the number of entitlements for the month (i.e., barrels of U.S. gasoline production for the month). Each importer of crude oil would be issued by the Department of Energy entitlements for that month equal in value to the fees paid by the importer for crude oil it imports during that month. Each refiner of gasoline would be required to purchase, and

importers must sell to them, entitlements for that month equal to the number of barrels of gasoline which the refiner produced that month. In this manner, the complete cost of the fee is borne by that portion of crude oil refining devoted to gasoline production.

Beginning on May 15, 1980, refiners of gasoline were to be allowed to pass-through in the price of gasoline the cost of the entitlements which they were required to purchase. It is expected that the dollar amount of the entitlements obligations for each barrel of gasoline produced in a month will be approximately $4.20, or 10 cents per gallon, although the exact amount may vary from month-to-month depending on the ratio of crude oil imports to gasoline production. It is intended that the amount of the fee will be adjusted from time to time, reflecting changes in that ratio, to keep the effective entitlements obligation on gasoline at approximately 10 cents per gallon.

Imported gasoline will be subject to a separate fee equal in amount to the entitlements obligation on domestically produced gasoline, or about $4.20 per barrel (10 cents per gallon), although the exact amount will vary with the entitlements obligation. The fee on imported gasoline also was to be passed through on prices charged for such gasoline effective May 15, 1980.

On May 13, 1980, the United States District Court for the District of Columbia declared the Petroleum Import Adjustment Program unlawful and enjoined implementation of the program. The Court held that the President's program must be taken in its entirety, i.e., the imposition of import fees and the entitlements program distributing the impact of the fee exclusively to gasoline, and that taken in its entirety, section 232 of the TEA did not authorize the program. The Court also found that the program did not fall within the inherent Constitutional powers of the President. The Court did not reach the issue of whether section 232 of the TEA and the EPAA taken together authorized the President's action, finding that the procedural requirements for actions under the EPAA had not been met. The Court's decision has been appealed by the administration.

S.J. Res. 159.—S.J. Res. 159 was introduced pursuant to section 232(e) of the TEA. The resolution disapproves the President's actions purportedly taken under section 232 to establish the Petroleum Import Adjustment Program by Proclamation 4744. Upon the date of enactment of the resolution, the President's action taken under section 232 would have no force or effect from that day forward. Thus, the fee on crude oil imports and gasoline imports would no longer have force or effect from the date of enactment, and any other aspects of the President's program which rely upon section 232 of the TEA would have no force or effect.

In recommending approval of S.J. Res. 159, the Committee notes that the President's Petroleum Import Adjustment Program is in reality equivalent to a 10-cents per gallon tax on gasoline rather than a measure primarily intended to reduce imports of petroleum and petroleum products. While a fee is initially imposed on imports of crude oil, under the program the importers are reimbursed for this cost and the cost associated with this fee may be passed through to consumers. Thus the cost of imports of crude oil is not increased. Rather, if the costs are passed through (the Administration's avowed

objective and the likely result), then the impact will be to raise the price of a gallon of gasoline, whether produced from imported or domestic oil, by approximately 10 cents at the pump according to the Administration's own estimate. Thus the Treasury collects the fee and the consumer pays 10 cents more for each gallon of gasoline; everyone else involved in the chain leading from importation to retail sale is made whole. The conservation effect that exists arises because the price of all gasoline is increased, whether produced from imported or domestic crude oil, there is no concentration of the conservation effect on imported crude oil. That the President's program is in reality primarily a tax, a revenue raising measure, is confirmed by the fact that the President has indicated that he would terminate the program if Congress increases the present $0.04 per gallon excise tax to an excise tax starting at $0.14 per gallon.

The conservation effect of this 10–cents per gallon increase to consumers in the price of gasoline is minimal. The Administration estimates that petroleum savings of 100,000 barrels per day by the end of 1980 and 250,000 barrels per day in 1983 will result from the President's program. This compares with estimates provided by the Congressional Budget Office of 80,000 and 90,000 barrels per day, respectively. Depending on the estimate used, these savings would represent a reduction in consumption of fuels used by automobiles and trucks of just under one percent to just over one percent in 1980, rising to fuel savings of just over one percent to about 3 percent by 1983. However, these fuel savings would cost depending on the estimate used, the consumer of gasoline approximately $150 to well over $300 per barrel saved. This minimal conservation effect compared to the cost to achieve it confirms that the President's program is intended primarily as a tax, rather than as a measure to conserve petroleum or reduce imports.

The approximately 10-cent per gallon increase in the price of gasoline resulting from the oil import fee would have a direct impact on the Consumer Price Index (CPI) of approximately one-half to three-quarters of a percentage point, depending on the estimates used. When indirect effects of the gasoline price increase are taken into account, the impact on the CPI would range from a low of three-quarters of a percent, as estimated by the Administration, to roughly one percent, as calculated by the Congressional Budget Office. This inflationary impact will bear heavily on particular sectors and particular individuals in the economy. For example, the CBO estimates that if present market trends persist, the oil import fee might result in a decline in the sales of U.S. manufactured automobiles of 175,000 units in 1980. This impact comes on top of the severe problems being experienced by the U.S. automobile industry as a result of the deepening recession. Further, low-income families who own automobiles will be the group most severely affected by higher prices. Many factors determine the level of gasoline consumption, but in general the abosolute level of gasoline consumption rises with income. The percentage of income spent on gasoline consumption declines, however, with increase in income. Therefore, while families with large incomes will be paying more than other families absolutely, their relative burden will be less.

If previous experience is a guide, families in the lowest quintile in terms of income who own cars will pay a larger share of their income to purchase gasoline than that paid by low-income families in general.

III. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the committee states that the bill was reported by the following roll call vote:

Yeas (14): Sens. Long, Talmadge, Byrd, Nelson, Gravel, Baucus, Boren, Dole, Roth, Danforth, Chafee, Heinz, Wallop, and Durenberger.

Nays (4): Sens. Ribicoff, Bentsen, Matsunaga, and Packwood.

IV. BUDGETARY IMPACT OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, sections 308 and 403 of the Congressional Budget Act of 1974, paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made effective to the cost and budgetary impact of the bill. The bill would authorize no new budgetary authority. Enactment of the resolution would result in a maximum net estimated revenue loss of approximately $3.1 billion in fiscal year 1980, and a maximum revenue loss of approximately $10 billion in fiscal year 1981. The committee accepts as its estimates the report of the Congressional Budget Office under section 403 of the Congressional Budget Act as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 14, 1980.

Hon. RUSSELL B. LONG,
Chairman, Senate Finance Committee,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office estimates that disapproval of the oil import fee, if all revenues already collected are returned, would result in a decrease of revenues below current law levels of $3.1 billion in fiscal year 1980 and of $10.0 billion in fiscal year 1981.

Sincerely,

ALICE M. RIVLIN, *Director.*

V. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 11(b) of XXVI of the Standing Rules of the Senate, the committee states that the provisions of the committee bill will not regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no additional paperwork. Indeed, enactment of the resolution would eliminate the substantial and complex reporting requirements required by the entitlements system established under the President's program.

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